

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

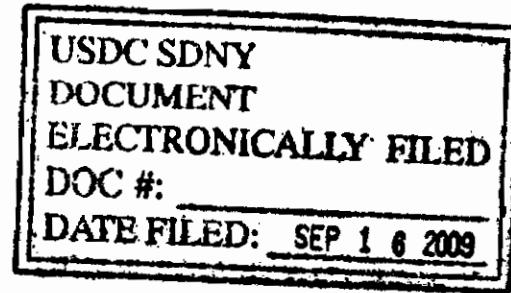
WEI ZHANG,

Plaintiff,

-v-

THE FOOD EMPORIUM, INC. et al.,

Defendants.



No. 09 Civ. 7788 (LTS)

**ORDER**

WHEREAS, this action was commenced by the filing of a Complaint on September 9, 2009, and the action was subsequently transferred to the undersigned; and

WHEREAS, the Court has reviewed such Complaint to ascertain the basis for assertion of subject matter jurisdiction in this court; and

WHEREAS, such Complaint asserts that the Court has jurisdiction based on diversity of citizenship (28 U.S.C. § 1332), but diversity jurisdiction pursuant to 28 U.S.C. § 1332(a)(1) requires a demonstration that the action is between citizens of different states and, with respect to the Plaintiff, the Complaint alleges merely that "the Plaintiff is a resident of the County of Alameda, State of California," and

WHEREAS, "subject matter jurisdiction is an unwaivable *sine qua non* for the exercise of federal judicial power," E.R. Squibb & Sons v. Accident & Cas. Ins. Co., 160 F.3d 925, 929 (2d Cir. 1998) (citation omitted), and Rule 12(h)(3) of the Federal Rules of Civil Procedure provides that "If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action;" it is hereby

ORDERED, that Plaintiff shall, no later than Friday, September 25, 2009, file and serve a Supplement to the Complaint containing allegations sufficient to demonstrate a basis for subject matter jurisdiction in this Court or otherwise show cause in writing as to why this case should not be dismissed for lack of subject matter jurisdiction.

SO ORDERED.

Dated: New York, New York  
September 16, 2009



LAURA TAYLOR SWAIN  
United States District Judge